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one from this scanty evidence. It appears, rather, that these declarations were so familiar in homicide cases that they escaped the application of the hearsay rule, along with other common sorts of evidence; that when the resulting exceptions to that rule began to be reasoned about, it was widely argued that this one rested on a principle equally applicable to civil cases; but that the alleged general principle inspired so little confidence that when the courts were squarely asked to adopt the extension it was unanimously rejected, almost without a struggle.

That this should have been the outcome in 1800 is in itself strong evidence against the peculiar credibility claimed for dying declarations. To-day the increasing disbelief in divine vengeance, the obvious security from human retribution afforded by approaching death, and the great variety of motives to falsehood which may operate even upon a dying man,[15] make it still more difficult to justify the admission of dying declarations on any reasoning which does not call for the admission of all apparently honest declarations of persons whose testimony has become unavailable through death.[16] Furthermore, an apparent readiness to reconsider settled points of evidence necessarily encourages vexatious appeals; and the result in the principal case is to admit, without cross-examination, the testimony of the deceased party to a transaction while the mouth of his living adversary is closed by statute which the court cannot amend.[17] It would seem, therefore, that the adoption of this new rule of evidence, so sweeping, and of such debatable expediency, should be left to the consideration of the legislature.

STATE REGULATION OF THE SALE OF STOCKS, BONDS, AND OTHER INVESTMENT SECURITIES. — A recent decision holding invalid the Michigan statute popularly known as the "Blue Sky" law raises the interesting question of how far a state may regulate the sale of stocks, bonds, and investment securities. *Alabama & New Orleans Transportation Co.* v. *Doyle*, 210 Fed. 173. In the last few years there has been a large increase in the number of investment securities of speculative nature and uncertain value. And by means of branch investment houses and traveling salesmen, the market for them has come to include an ever increasing proportion of the public. The liberty to carry on any business is within the protection of the Fourteenth Amendment,[1] and any limitation on this liberty must be justified under the police power. Restrictions on liberty are proper if reasonably adapted to the securing of

[15] These motives may operate with more than ordinary force at a time when the opportunity to gratify revenge or affection is known to be slipping rapidly away. That they often do lead to falsehoods has been recognized. See 1 STEPHEN, HIST. CRIM. LAW, 448; Carver *v.* United States, 164 U. S. 694, 697, 17 Sup. Ct. 228, 230.

[16] This broad exception to the hearsay rule has been adopted by statute in Massachusetts. 1902 MASS. R. L. c. 175, § 66.

[17] 1909 KAN. GEN. STAT. c. 95, § 5914. This objection to the adoption of the rule in the principal case by decision is not confined to Kansas. Similar statutes prevail throughout the United States. They are collected in 1 WIGMORE, EVIDENCE, § 488.

[1] Allgeyer *v.* Louisiana, 165 U. S. 578, 589, 17 Sup. Ct. 427, 431; Lochner *v.* New York, 198 U. S. 45, 25 Sup. Ct. 539; Adair *v.* United States, 208 U. S. 161, 28 Sup. Ct. 277.

a recognized social interest.[2] The preserving of the economic stability of society by protecting individuals from the loss of property by fraud has been recognized as securing a social interest.[3] Accordingly, the courts have held valid, statutes which require licenses and indemnity bonds from those dealing on a commission in farm produce,[4] or requiring licenses from pawn brokers [5] and peddlers [6]; also such statutes as require that oleomargarine should be labelled as such.[7] In certain cases it has been considered that it is to the social interest to protect the individual from loss to his property even when fraud is not involved. Many provisions with regard to insurance companies and banks are aimed at safeguarding the public from the results of unforeseen misfortunes or bad management.[8] Protecting the weak and ignorant from improvident contracts and other losses resulting from the losers' folly has been recognized as a social interest in usury and other similar legislation.[9]

Protecting the ignorant and improvident from loss in the stocks or securities of "wild-cat" schemes of a fraudulent or highly uncertain nature, might well be a subject for legislative action. But there is a strong public interest in the general freedom of business and the liberty of the individual to buy and sell as he chooses.[10] To be upheld as reasonable the benefits from any legislation must outweigh the restraint on liberty thus involved.[11] A peculiar danger of deception, or unwise speculation in stocks, bonds, and other securities comes from the difficulty which the untrained man finds in distinguishing between those that are valuable and those that are worthless. Accordingly, it would probably not involve an unreasonable restraint on liberty to require the licensing of the sellers and the recording of securities, in order to make it more difficult for the fraudulent to operate; nor would it be too

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[2] See Mugler *v.* Kansas, 123 U. S. 623, 661, 8 Sup. Ct. 273, 297; *Ex parte* Whitwell, 98 Cal. 73; 27 HARV. L. REV. 573.

[3] COOLEY, CONST. LIMITATIONS, 7 ed., p. 887. Plumley *v.* Massachusetts, 155 U. S. 461, 15 Sup. Ct. 154; State *v.* Moore, 104 N. C. 714, 10 S. E. 143; Steiner *v.* Ray, 84 Ala. 93, 4 So. 172; Commonwealth *v.* Crowell, 156 Mass. 215, 30 N. E. 1015.

[4] State *v.* Wagener, 77 Minn. 483, 80 N. W. 633; *contra*, People *v.* Berrien Circuit Judge, 124 Mich. 664, 667, 83 N. W. 594, 595. Compare also W. W. Cargill Co. *v.* Minnesota, 180 U. S. 452, 21 Sup. Ct. 413.

[5] City of Grand Rapids *v.* Braudy, 105 Mich. 670, 64 N. W. 29.

[6] People *v.* Russell, 49 Mich. 617.

[7] Plumley *v.* Massachusetts, *supra.*

[8] FREUND, THE POLICE POWER, § 400. For a discussion of the extent to which the regulation of insurance companies has gone, see 25 HARV. L. REV. 372. The case which goes the farthest in allowing the regulation of banks is that which holds constitutional the statute providing that all banks must contribute to a guaranty fund to protect depositors against the failing of any bank. Noble Bank *v.* Haskell, 219 U. S. 104, 31 Sup. Ct. 186.

[9] The principle that the police power justifies the preventing of improvident contracts has been applied to protect laborers in getting their wages in cash and at frequent intervals. *Re* House Bill, No. 1230, 163 Mass. 589, 40 N. E. 713. Hancock *v.* Allen, 121 Ind. 366; Peel Splint Coal Co. *v.* State, 36 W. Va. 802. Also in the case of preventing sales on a margin. Otis *v.* Parker, 187 U. S. 606, 23 Sup. Ct. 368. Compare cases where restrictions on the sale of trading stamps have been held unconstitutional. State *v.* Dodge, 76 Vt. 197, 56 Atl. 983; People *v.* Gillson, 109 N. Y. 389; State *v.* Ramseyer, 73 N. H. 31, 58 Atl. 958.

[10] For a further discussion of the legislative power to limit the freedom of contract, see 27 HARV. L. REV. 372.

[11] Lochner *v.* New York, *supra.*

great a restraint to require the giving of complete data as to the condition of the company and the nature of the security in order to make more clear the merits of an investment proposition.

The Michigan statute goes far beyond this. It also gives to a Commission the right to prohibit the sale entirely if it finds that "the sale would in all probability result in a loss to the purchaser." [12] This would seem to go far beyond what is necessary for protection against fraud, and the restriction of the liberty of the purchaser having knowledge of the facts, in choosing for himself what are for him good or bad investments is so sweeping as to be an unreasonable way of preventing loss from folly. The same extreme paternalism is shown in the provision that the sale of all securities is forbidden for thirty days after filing data with the Commission. When one considers the multitude of sound securities affected and the necessity in many cases of quick sales in order properly to finance legitimate business ventures, the restraint on liberty is clearly improper.[13]

Assuming that some regulation of the sale of securities is within the due process clause the question remains whether such regulation is an interference with interstate commerce in so far as it affects the sale of stocks and bonds brought in from outside the state. A state may not ordinarily tax or require a license fee for the negotiating of contracts which contemplate the interstate shipment of an article of commerce.[14] An insurance contract made with a foreign company which contemplates the interstate transfer of a policy is not interstate commerce.[15] On the other hand, lottery tickets are the subject of interstate commerce.[16] An early decision holds that the dealer in foreign bills of exchange is not engaged in interstate commerce and may be taxed by a state [17] but the modern tendency to consider bonds and negotiable securities as analogous to chattels would indicate that they would now be held to be the subject of interstate commerce.[18] However, regulations of the sale if properly within the police power would probably be justified even though interstate commerce were affected.[19]

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[12] This also may be an improper delegation of legislative power. The rule laid down is so indefinite that the determining of each case would be very close to an exercise of discretion legislative in nature rather than acting as an executive in carrying out a rule laid down. See 15 HARV. L. REV. 852; 21 HARV. L. REV. 205.

[13] The Bulk Sales Acts providing a delay of sales in bulk by a dealer until a reasonable time to notify creditors are clearly distinguishable. Lemieux *v.* Young, 211 U. S. 489, 29 Sup. Ct. 174; Kidd *v.* Musselman, 217 U. S. 461, 30 Sup. Ct. 606.

[14] Robbins *v.* Shelby County Taxing District, 120 U. S. 489, 7 Sup. Ct. 492; Rearick *v.* Pennsylvania, 203 U. S. 507; Caldwell *v.* North Carolina, 187 U. S. 622, 23 Sup. Ct. 229; International Text Book Co. *v.* Pigg, 217 U. S. 91, 30 Sup. Ct. 481.

[15] Paul *v.* Virginia, 8 Wall. (U. S.) 168; N. Y. Life Insurance Co. *v.* Deer Lodge County, 231 U. S. 495, 34 Sup. Ct. 167.

[16] The Lottery Case, 188 U. S. 321, 23 Sup. Ct. 321.

[17] Nathan *v.* Louisiana, 8 How. (U. S.) 73.

[18] See Wheeler *v.* Sohmer (Sup. Ct. U. S., April 20, 1914, not yet reported). Title to lottery tickets passes by delivery. Possibly a distinction might be taken between those written instruments which are negotiable and stocks which might be classed with insurance policies, but this hardly seems reasonable.

[19] Plumley *v.* Massachusetts, *supra*. It might perhaps be contended that the regulation of stocks and bonds should be limited by the "original package" doctrine. Leisy *v.* Hardin, 135 U. S. 100, 10 Sup. Ct. 681, but it is submitted that no court would apply that doctrine in such a case.